IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-185

CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION, *et al.*,
Petitioners,

v.

JAMES M. NAMEN, *et al.*, AND THE CITY OF POLSON, MONTANA,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

URBAN L. ROTH
Counsel for Respondent
Suite 400, Silver Bow Block
Butte, Montana 59701

POORE, McKENZIE, ROTH,
ROBISCHON & ROBINSON, P.C.
James A. Poore, III
Of Counsel

October, 1976

ARTCRAFT, BUTTE

INDEX

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-185

CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION, *et al.*,
Petitioners,

v.

JAMES M. NAMEN, *et al.*, AND THE CITY OF POLSON, MONTANA,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

QUESTION PRESENTED

Whether a United States patent conveying land riparian to a navigable lake to an Indian allottee grants to the allottee-patentee traditional riparian rights to erect docks and wharves to gain access to navigable waters.

SUPPLEMENTARY STATEMENT OF THE CASE

The United States issued fee simple patents to Antoine Morais, a Flathead Indian, to land riparian to

Flathead Lake.[1] A portion of that riparian land with docks and wharves attached is now occupied by Respondents [2] and is used by them to gain access to the navigable waters of Flathead Lake.[3]

Petitioners instituted this case by filing a complaint which is reproduced as Appendix B. The complaint alleged Petitioners were the sole owners of the bed and banks of Flathead Lake below high-water mark. The relief requested that Respondents be declared trespassers and be ordered to remove all structures below high-water mark.

The issue presented to the District Court did not, as Petitioners contend, involve Indian control over docks and wharves, did not involve conflicting jurisdictional questions such as state jurisdiction over Indians or Indian lands, nor even Indian sovereignty or pseudo sovereignty over tribal lands,[4] and the question of whether the particular structures sought to be removed are reasonable *remains pending in the District Court.*[5]

The south half of Flathead Lake lies within the ex-

---

[1] The patents are reproduced as Appendix A and are dated May 17, 1910, and preceded the Indian Reorganization Act of 1934, 48 Stat. 984, and the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638.

[2] The land patented to Morais and now owned by Respondents is not just adjacent to Flathead Lake; it is riparian to Flathead Lake. *Confederated Salish & Kootenai Tribes, et al.,* v. *Namen, et al.,* 380 F. Supp. 452, 456 (D.Mont., 1974); Petitioners' Appendix B, p. 7a.

[3] 380 F. Supp., *supra,* at 456; Petitioners' Appendix B, pp. 7a-8a.

[4] The District Court carefully weeded out from its case analysis these so-called prime issues. 380 F. Supp., *supra,* at 462-463; Petitioners' Appendix B, pp. 20a-21a.

[5] 380 F. Supp., *supra,* at 467; Petitioners' Appendix B, p. 29a.

terior boundaries of the original Flathead Indian Reservation. Located within this south half of the lake are a number of islands, including Wild Horse Island and Cromwell Island.[6] Exhibit B, a map of the south half of Flathead Lake, reproduced as Appendix C, illustrates these two islands.

By the Act of April 23, 1904, and acts amendatory thereto, Congress "opened" the Reservation to the public.[7] The process of opening the Reservation entailed surveys, allotments to enrolled members of the Tribes, and various modes of patenting Reservation lands to non-Indians.[8] Under the Allotment Act of 1904,[9] non-Indians could obtain title to Reservation lands through townsites, homesteads, mineral locations, school lands, public sales, villa sites, and by purchasing from allottees their allotted lands. The Allotment Act of 1904 did not contemplate that any tribal or communal land would remain after the allotment and opening process was completed.[10] Island lands, such

---

[6] "All lands on Wild Horse Island were conveyed under the Allotment Act of 1904 (33 Stat. 302) as amended." 380 F.Supp., *supra,* at 457; Petitioners' Appendix B, p. 8a.

[7] *Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Montana* v. *United States,* 437 F.2d 458 (Ct.Cl., 1971).

[8] 380 F.Supp., *supra,* at 459-461; Petitioners' Appendix B, pp. 13a-16a; Petitioners' Appendix F, pp. 50a-55a.

[9] 33 Stat. 302.

[10] The Allotment Act of 1904 was the method by which Congress authorized conveyance of once tribal land to Indians and non-Indians. Thus, the rule expressed in *Leavenworth, etc., R.R. Co.* v. *United States,* 92 U.S. 733, 742 (1876), is totally inapplicable. Rather, the basic principle established in *Buttz v. Northern Pac. Railroad,* 119 U.S. 55, 70 (1886), applies. The distinction between the two cases is carefully made in *Southern Pac. R.R. Co.* v. *Bell,* 183 U.S. 675, 680-681 (1902). Compare *Jones* v. *Meehan,* 175 U.S. 1, 20 S.Ct. 1, 4-6 (1899).

as Wild Horse Island and Cromwell Island, were disposed of in the same way.[11]

More than fifty years have elapsed since the Flathead Reservation was opened. Since that time, riparian owners have expended large sums of money to erect docks and wharves. The suit by Petitioners is the first instance in which they have judicially asserted exclusive right to the bed and banks as that right relates to the erection of docks and wharves.[12]

Reproduced as Appendices E and F, respectively, are the Senate Report and House Report urging adoption of the Allotment Act of 1904, and reproduced as Appendix G is a Brochure with attached map published by the Interior Department to promote sales of riparian lots offered for public sale pursuant to the Villa Sites Act.[13] Reproduced as Appendix H is the Interior Report urging adoption of the "Villa Sites Act." Each one of these documents reflects a congressional intent totally consistent with attaching riparian rights to riparian lands.

REASONS FOR NOT GRANTING THE WRIT

The Petitioners did not institute this case to vindicate any regulatory or control process, nor did they institute this case to resolve questions of state versus federal or Indian jurisdiction within the Reservation. Rather, this case was instituted to establish in the Tribes exclusive title to all land and water below high-water mark and the right to remove all encroaching structures.

---

[11] See footnote 6, supra.

[12] See Stipulation reproduced as Appendix D.

[13] Act of April 12, 1910; 36 Stat. 296-297, Section 23.

To establish this right, the Tribes ask this Court to overrule decisions articulating established rules of patent construction and to ignore well settled federal common law principles.

Since the early days of our federation, this Court has held firmly to the principle that federal grants-patents to former tribal-reservation lands are to be construed according to the laws of the state in which the Indian lands are located.

State of Oklahoma v. *State of Texas*, 258 U.S. 574, 594-595, 598 (1921); *Brewer-Elliott Oil & Gas Co.* v. *United States*, 260 U.S. 77, 88-89 (1922); *United States* v. *Champlin Refining Co.*, 156 F.2d 769, 773 (10th Cir., 1946), aff'd 331 U.S. 788-789 (1947); *United States* v. *Oklahoma Gas & Electric Co.*, 318 U.S. 206, 209-210 (1942); compare *Whitaker* v. *McBride*, 197 U.S. 510 (1904).[14]

---

[14] The rule articulated in the cited cases has been consistently applied in similar controversies — some involving former Indian lands. See, e.g., *Hardin* v. *Shedd*, 190 U.S. 508, 509 (1902); *Shiveley* v. *Bowlby*, 152 U.S. 1, 45 (1894); *Hardin* v. *Jordan*, 140 U.S. 371 (1891); *Packer* v. *Bird*, 137 U.S. 661 (1891); *Choctaw & Chickasaw Nations* v. *Board of County Commissioners*, 361 F.2d 932, 933 (10th Cir., 1966); *Choctaw & Chickasaw Nations* v. *Seay*, 235 F.2d 39, 35 (10th Cir., 1956); *Herron* v. *Choctaw & Chickasaw Nations*, 228 F.2d 830, 832 (10th Cir., 1956); *United States* v. *Elliott*, 131 F.2d 720, 723 (10th Cir., 1942); *Shore* vs. *Shell Petroleum Corp.*, 55 F.2d 696, 902, aff'd 60 F. 2d 1, 2 (10th Cir., 1932); *United States* v. *Hayes*, 20 F.2d 873, 889-890 (8th Cir., 1927) cert.den 275 U.S. 555; *United States* v. *Heinrich*, 12 F.2d 938, 939 (D.-Mont., 1926). While as pointed out in *United States* v. *Oregon*, 295 U.S. 1, 27-28 (1935), the construction of federal grants is initially a federal question the federal courts traditionally defer to state rules of construction. Under state law, of course, Respondents would own the bank and shore to *low-water mark*. See, e.g., Section 67-712 and Section 89-601, Revised Codes of Montana, 1947; *Fawcette* v. *Dewey Lumber Co.*, 82 Mont. 250, 266 P. 646 (1928); *C. F. Mettler* v. *Ames Realty Co.*, 61 Mont. 152, 201 P. 792 (1921); *Gibson* v. *Kelly*, 15 Mont. 417, 422, 39 P. 517 (1895).

The second principle which Petitioners seek to overrule establishes:

Federal patents of lands riparian to navigable waters convey the riparian right to wharf and dock out to navigable water. *Potomac Steamboat Co.* v. *Upper Pot. F. Co.*, 109 U.S. 672, 682-683 (1884); *Martin* v. *Std. Oil Co. of N.J.*, 91 U.S.App.D.C. 84, 198 F.2d 523, 526 (1952); *United States* v. *Belt*, 79 U.S.App. D.C. 87, 142 F.2d 761, 767 (1944); *Worthen Lumber Mills* v. *Alaska Juneau Gold Mining Co.*, 229 F. 966, 970 (9th Cir., 1916); *Dalton* v. *Hazelet*, 182 F. 561, 573 (9th Cir., 1910); *Decker* v. *Pacific Coast S. S. Co.*, 164 F. 974, 976 (9th Cir., 1908); *Columbia Canning Co.* v. *Hampton*, 161 F. 60, 64 (1908); *Ketchikan Spruce Mills* v. *Alaska Concrete Prod. Co.*, 113 F. Supp. 700, 701-702 (D.Alaska, 1953); *United States* v. *Groen*, 73 F.Supp. 713, 720 (D.D.C. 1947). See also *Whitaker* v. *McBride*, *supra*.

This principle is superimposed upon the federal common law doctrine which recognizes that the riparian right to dock and wharf out to navigable waters is one of the most valuable rights attaching to riparian land. *Dutton, et al.*, v. *Strong*, 1 Black 23, 31-33 (1861); *Railroad Company* v. *Schurmeir*, 7 Wall. 272, 287-289 (1868); *Yates* v. *Milwaukee*, 10 Wall. 497, 504 (1870); *United States* v. *River Rouge Improvement Co.* 269 U.S. 411, 418 (1926). Compare *Bonelli Cattle Co.* v. *Arizona*, 414 U.S. 318, 326 (1973).

Equally well established in the federal common law is the axiom: An express declaration of this riparian right in the conveyance itself would be redundant. *Illinois Central R. Co.* v. *State of Ill.*, 146 U.S. 387, 13 S.Ct. 110, 115 (1892).

I.

Petitioners argue that the District Court ignored a fundamental proposition: Indian treaties and Congressional acts involving Indian rights must be liberally construed in favor of the Indians. Because the Ninth Circuit has federal jurisdiction over vast areas of Indian lands and a majority of American Indians, the Court is urged to grant review. Petitioners did not, however, seek a rehearing nor a hearing *in banc* to permit the appellate court the opportunity to further review its decision.[15]

However, the District Court neither ignored the rule requiring liberal construction in favor of the Indians, nor did it breach the rule.[16] Riparian rights had long been impliedly attached to federal conveyances in favor of Indians and their successors in interest.[17] The intention of Congress to convey tracts of reservation lands by townsites, homesteads, and mineral patents clearly carried with it the intention

---

[15] Rule 35 (a) (2) and (b) and Rule 40, Rules of Appellate Procedure for the United States Court of Appeals.

[16] 380 F.Supp., *supra*, at 464-466; Petitioners' Appendix B, pp. 23a-27a.

[17] *Jones* v. *Meehan*, 175 U.S. 1, 20 S.Ct. 1 (1899). (Minnesota has declared the Red Lake River to be navigable. *Crookston Waterworks, Power & Light Co.* v. *Sprague*, 91 Minn. 461, 98 N.W. 347 (1904), rev'd on other grounds, 92 Minn. 57, 99 N.W. 420 (1905); *Arbol* v. *Grand Forks Lumber Co.*, 131 Minn. 186, 154 N.W. 968 (1915). See also *Fontenelle* v. *Omaha Tribe*, 430 F.2d 113 (8th Cir., 1970), and cases cited in footnote 14, *supra*.

In *Jones* v. *Meehan*, supra, 20 S.Ct. at 4-6, the Court, in recognizing that a grant of riparian land to an Indian chief carried with it dockage and wharfage rights, rejected a statutory restriction similar to 25 U.S.C. Section 177 because Congress had approved the Indian grant just as Congress, by the Allotment Act of 1904, 33 Stat. 302, authorized the Morais allotment.

to convey the concomitant riparian rights that customarily accompanied such patents or grants.[18]

The fact that allotted and homestead lands were located on islands within the south half of Flathead Lake evidences a clear intention to convey with the allotments and the patents riparian rights of dockage and wharfage.

Petitioners in essence assert the exclusive right to a strip of land between high water and the navigable waters of Flathead Lake. This Court characterized such a claim as anachronistic even when the competing parties were true sovereigns—states [19]—which, of course, Indian tribes are not.[20]

The argument that the doctrine of riparian rights was unknown to untutored Indians and that the doctrine could not be unfairly imposed upon them has also been subjected to analysis and rejected.[21]

---

[18] *Sturr* v. *Beck*, 133 U.S. 541, 547 (1889); *Cruse* v. *McCauley*, 96 F. 369, 371, (Cir.Ct.D.Mont., 1899); see also 43 U.S.C., Section 661, 14 Stat. 253 (1856). Although the riparian rights doctrine had given way to the appropriation method of water right acquisition; nevertheless, where applicable, riparian rights impliedly attached to waters acquired in the process of locating minerals. See, e.g., *Atchison* v. *Peterson*, 20 Wall. 507, 511 (1874); *Schwab* v. *Bean*, 86 F. 41, 43-44 (C.C.A., Colo., 1898).

[19] *Commonwealth of Massachusetts* v. *State of New York*, 271 U.S. 65, 46 S.Ct. 357, 362 (1926).

[20] *Arizona* v. *California*, 373 U.S. 546, 597 (1963); *United States* v. *Kagama*, 118 U.S. 375, 381 (1886); as the District Court observed, Indian tribes are more nearly analogous to United States territories prior to statehood. 380 F.Supp., *supra*, at 462; Petitioners' Appendix B, pp. 19a-20a.

[21] *The Creek Nation*, 168 Ct.Cl. 269 (1965); *The Creek Nation* v. *United States*, 92 Ct.Cl. 269, 274-275; *United States* v. *Hayes*, 20 F.2d 873, 889, cert.den. 275 U.S. 555 (8th Cir., 1927).

II.

The Court below neither indulged in balancing equities nor did it violate any rule of construction. The cardinal rule of construction which has been applied to Indian allotment patents and other federal patents is this:

> "Grants by the United States of its public lands bounded on streams or other waters, *navigable or nonnavigable*, made without reservation or restriction, are to be construed as to their effect according to the law of the state in which the land lies. As regards such conveyances, the United States assumes the position of a private owner, subject to the general law of the state. *Where it is disposing of tribal lands of Indians under guardianship, the same rules applies.*" *(United States* v. *Champlin Refining Co.*, 156 F.2d 769, 773 (10th Cir., 1946) aff'd 331 U.S. 788; emphasis supplied.)[22]

Of course, measured by state law, the ownership of the upland extends to low-water mark.[23]

Superimposed upon the above-quoted rule of Indian-patent-construction is also the principle that:

> "The riparian right (to dock and wharve out to navigable waters) attaches to land on the border of navigable water, *without any declaration to that effect from the former owner, and its designation in a conveyance by him would be surplusage.*" *(Illinois Cent. R. Co.* v. *Ill.*, 146 U.S. 387, 13 S.Ct. 110, 115 (1892); emphasis supplied; parenthetical words supplied.)

---

[22] See also cases cited in footnotes 11 and 17, *supra*.

[23] See footnote 14, *supra*.

III.

Federal courts have often implied and attached to patents of Indian lands rights which, at times, clearly resulted in Indians suffering a loss of tribal land or waters:

(1) Use of reservation waters for irrigation to a successor to an Indian allotment: *United States* v. *Powers*, 305 U.S. 527, 533 (1939); (2) ownership of submerged lands to the thread of the stream: *State of Oklahoma* v. *State of Texas*, 258 U.S. 574, 594 (1921); *United States* v. *Hayes*, 20 F.2d 873 (8th (Cir., 1927) cert.den. 275 U.S. 555; *The Creek Nation*, 168 Ct.C1. 269 (1965); (3) Mineral rights: *Choctaw & Chickasaw Nations* v. *Board of County Commissioners*, 361 F.2d 932, 933 (10th Cir., 1966); (4) Riparian right of accretion: *Fontenelle* v. *Omaha Tribe*, 430 F.2d 143 (8th Cir., 1970). In *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), this Court diminished and disestablished portions of a reservation through implications.[24]

IV.

The Petitioners characterize the Court's recognition of admitted facts[25] as embracing a "balancing of equities" philosophy. However, a careful reading of the Court's decision reflects that the Court relied upon those facts along with legislative history and other facts only to establish that contemporaneous construc-

[24] The District Court recognized these same implications. 380 F.Supp., *supra*, at 465; Petitioners' Appendix B, p. 26a.

[25] See Appendix D.

tion of patents to Reservation lands included the riparian rights of dockage and wharfage.[26]

These are precisely the same type of facts this Court has relied upon to establish Congressional intent. See, e.g., *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975).

V.

Petitioners argue that the District Court decision effectively precludes them from enjoying their exclusive fishing rights guaranteed by the treaty, relying principally upon *United States* v. *Winans*, 198 U.S. 371, 25 S.Ct. 662 (1905). However, even a casual reading of Judge Jameson's decision establishes that such a finding was neither expressed nor implied.[27] The Court actually held that the exclusivity of tribal title was burdened with the riparian right of dockage. The question of what rights of access to Flathead Lake were retained by the Tribe was not even touched upon.

Petitioners' reliance upon *Winans* is also misplaced because *Winans* re-established the supreme sovereignty the United States exercises over all lands within its boundaries[28] and in a reverse situation burdened the

[26] F.Supp., *supra*, at pp. 463, 465, 466; Petitioners' Appendix B, pp. 22a, 25a, 28a-29a.

[27] In *United States* v. *Pollman*, 364 F.Supp. 995 (D.Mont., 1973), Judge Jameson ruled that the Petitioners still possessed their exclusive fishing rights in Flathead Lake.

[28] Quoting from *Shiveley* v. *Bowlby*, 152 U.S. 1, the Court said: "'By the Constitution, as is now well settled, the United States having rightfully acquired the territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, Federal and state, over all the territories, so long as they remain in a territorial condition. (Citing cases.)'" 25 S.Ct. at 665.

non-Indian's title with an access easement. Particularly apropos to this case is the following statement:

> "The extinguishment of the Indian title, opening the land for settlement, and preparing the way for future states, were appropriate to the objects for which the United States held the territory. And surely it was within the competency of the nation to secure to the Indians such a remnant of the great rights they possessed as 'taking fish at all usual and accustomed places.' Nor does it restrain the state unreasonably, if at all, in the regulation of the right. It only fixes in the land such easements as enable the right to be exercised." 25 S.Ct. at 665.

In granting Morais and others riparian land, Congress surely intended to convey "such easements as enable" the land to be enjoyed for its obvious purpose.

CONCLUSION

The construction placed upon the Morais patent by the District Court is consistent with well established principles of federal law. No new precedent is created; no Indian policies violated. The District Court's decision, affirmed by the Ninth Circuit, contrary to Petitioner's assertion, does not pretend to limit Indian jurisdiction nor encroach upon Indian sovereignty. As the District Court said:

> "Thus, an analysis of the relevant case law firmly establishes two principles:
>
> "(1) In all other situations in which the Federal Government holds title to the beds and banks of navigable waters, a fee patent issued by the United States to riparian lands would include the rights of access and wharfage without an express provision in the patent. This was established

> as early as 1861 in Dutton v. Strong, *supra*, and consistently followed in many subsequent cases.
>
> "(2) Where the United States holds title in trust for Indian Tribes, federal common law is applicable to a determination of the extent of a federal grant despite the lack of any express Congressional language to that effect." 380 F.Supp., *supra*, at 466; Petitioners' Appendix B, p. 27a.

The Petition for Certiorari should be denied.

Respectfully submitted,

URBAN L. ROTH
Counsel for Respondents
Suite 400, Silver Bow Block
Butte, Montana 59701

POORE, McKENZIE, ROTH,
ROBISCHON & ROBINSON, P.C.
James A. Poore, III
Of Counsel

APPENDICES

APPENDIX A

Transcribed from Flathead County Records,
Book 116 Deeds, page 607

29484-10; 24859-10 1.0.; 1378.

THE UNITED STATES OF AMERICA.
TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:

WHEREAS, There has been deposited in the General Land Office of the United States an order of the Secretary of the Interior directing that a fee simple patent issue to Antoine Morais a Flathead Indian, for the Lot one and the east half of the Lot two of Section three in Township twenty-two North of Range Twenty West of the Montana Meridian, Montana, containing thirty-five and forty-two hundredths acres.

NOW KNOW YE, That the United States of America, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said Antoine Morais and to his heirs, the lands above described; To have and to hold the same, together with all rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said Antoine Morais and to his heirs and assigns, forever. And there is reserved from the lands hereby granted a right of way thereon for ditchs or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, William H. Taft, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the seventeenth day of May in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States the one hundred and thirty-fourth.

By the President: Wm. H. Taft
By M. P. LeRoy, Secretary
H. W. Sanford, Recorder of the
General Land Office

Recorded: Patent Number 130370
Re-recorded December 23-1912, Book 115-page 530

Recorded at request of F. L. Gray this 29th day of March 1911 at 12-15 o'clock p.m.

Fred S. Perry, County Recorder.
By J. R. Sauser, Deputy. No. 1123-

Transcribed from Flathead County Records,
Book 118 Deeds, page 830
29484-10; 24639-10 1.0.; 1378.

THE UNITED STATES OF AMERICA.
TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:

WHEREAS, There has been deposited in the General Land Office of the United States an order of the Secretary of the Interior directing that a fee simple patent issue to Antoine Morais a Flathead Indian, for the Lot one and the east half of the Lot two of Section three in Township twenty-two North of Range Twenty West of the Montana Meridian, Montana, containing thirty-five and forty-two hundredths acres.

NOW KNOW YE, That the United States of Amer-

ica, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said Antoine Morais and to his heirs, the lands above described; To have and to hold the same, together with all rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said Antoine Morais and to his heirs and assigns, forever. And there is reserved from the lands hereby granted a right of way thereon for ditchs or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, William H. Taft, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the seventeenth day of May in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States the one hundred and thirty-fourth.

By the President: Wm. H. Taft
By M. P. LeRoy, Secretary
H. W. Sanford, Recorder of the
General Land Office.

(United States Land Office Seal)

Recorded: Patent Number 130370

Recorded at request of F. L. Gray this 23rd day of Dec. 1912 at 10:00 o'clock A.M.

Fred S. Perry, County Recorder. No. 4697
(Re-recorded on account of error in former deed, U.S. Land Office Seal omitted. See book 116, page 607 for former deed.)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Civil Action No. 2343
Filed: August 3, 1973
By N. P. Cronin, Deputy Clerk

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA, AND HAROLD W. MITCHELL, JR., CHAIRMAN OF THE TRIBAL COUNCIL, ON HIS OWN BEHALF AND AS A REPRESENTATIVE OF THE CONFEDRATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA,

Plaintiffs,

v.

JAMES M. NAMEN, POLSON, MONTANA, BARBARA J. NAMEN, POLSON, MONTANA, A. J. NAMEN, KALISPELL, MONTANA, AND KATHRYN NAMEN, KALISPELL, MONTANA,

Defendants.

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY JUDGMENT

The plaintiffs for their complaint allege as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1362, in that this action arises under the Treaty of Hell Gate, July 16, 1855, 12 Stat. 975, be-

tween the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and the United States of America, and upon the ground that this is an action by Indian tribes with a governing body duly recognized by the Secretary of the Interior.

2. This is an action for preliminary and permanent injunction and for a declaratory judgment, pursuant to 28 U.S.C. §2201, involving a question of actual controversy between the parties, as hereinafter more fully appears.

3. There is no adequate remedy at law.

4. The plaintiffs, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana (hereinafter referred to as the "Tribes"), are American Indian tribes organized pursuant to the provisions of the Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. §§461, *et seq.*, with a governing body duly recognized by the Secretary of the Interior.

5. Plaintiff Tribes sue on their own behalf.

6. Plaintiff Harold W. Mitchell, Jr., is an enrolled member of the Tribes, Chairman of the Tribal Council, the governing body of the Tribes, and sues as a representative of the Tribal Council and of the Tribes.

7. Defendant James M. Namen is sued in his individual capacity as an owner of the following described lands, Montana Principal Meridian E½ Lot 2, Section 3, Township 22 North, Range 20 West, and as the proprietor and doing business as Jim's Marina, Polson, Montana. Defendants Barbara J. Namen, A. J. Namen and Kathryn Namen are sued in their in-

dividual capacities as owners in common with James M. Namen of the above-described property.

8. Pursuant to the Treaty of Hell Gate, July 16, 1855, 12 Stat. 975 (hereinafter referred to as the "Treaty"), the Tribes reserved from a grant of their aboriginal homelands to the United States, and the United States guaranteed the lands so reserved would remain as the Tribes' permanent home, a reservation within the boundaries of what now is the present State of Montana. The Reservation is known now as the Flathead Indian Reservation, Montana. The lands so reserved in the Treaty are described as follows:

> "Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse Prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning." (at 976)

The lands so reserved by the Tribes and established as a reservation by the Treaty include the south half of Flathead Lake. Title to the lands so reserved, including the banks and bed of the south half of Flathead Lake, is held by the United States in trust for the Tribes, unless expressly granted away by the United States through Congressional action subsequent to the Treaty.

9. By Article II of the Treaty, the United States

undertook to hold title to the reserved area, including the bed and banks of the southerly half of Flathead Lake, within the exterior boundaries of the Flathead Reservation, in trust for the Tribes. The United States continues today to hold title to the bed and banks of the southerly half of Flathead Lake below the line of the ordinary high water mark, such title held in trust for the Tribes. The beneficial ownership of the Tribes in the beds and banks of Flathead Lake have not been extinguished by the federal government.

10. Defendants are the owners, through successive conveyances, of portions of former Indian Allotment No. 1378, made to one Antoine Morais, pursuant to the Act of April 23, 1904, 33 Stat. 304, as amended, which allotment included the lands described above in paragraph 8.

11. Said allotment conveyed land to the allottee only to the high water mark of Flathead Lake, and the land below that point and under the bed of the lake was and is held by the United States in trust for the Tribes. The present owners of the former allotment could receive only what the allottee received, to wit, lands to the high water mark of Flathead Lake.

12. At the time of the allotment to Antoine Morais, the high water mark was at least at elevation 2893.2 feet and is at least at that point today.

13. Defendant James M. Namen, individually and as a proprietor of Jim's Marina, located in Polson, Montana, on a portion of the lands conveyed by Allotment No. 1378, is in trespass on lands held for the Tribes by virtue of buildings and structures which he has erected and maintained and continues to erect and

maintain which extend beyond the high water mark of 2893.2 feet and encroach on the banks and bed of Flathead Lake. Said defendant, although informed of the trespass, refuses to remove the building and structures.

WHEREFORE, the plaintiffs pray:

1. That defendants be enjoined *pendente lite* and permanently from proceeding in any manner whatsoever in further trespassing upon plaintiffs' lands;

2. That it be declared, ordered, adjudged and decreed that the defendants are in trespass upon plaintiffs' land to the extent that they maintain and have erected and maintained buildings and structures beyond the high water mark of elevation 2893.2 feet of Flathead Lake and encroach on the bed and banks of said Lake, and that defendants be directed to immediately remove all buildings and structures, including landfills, that extend beyond elevation 2893.2 feet of Flathead Lake and that the lands beyond elevation 2893.2 feet be restored to their original condiiton;

3. That defendants pay to plaintiffs the cost of this action; and

4. That plaintiffs have such other and further relief as is just and equitable.

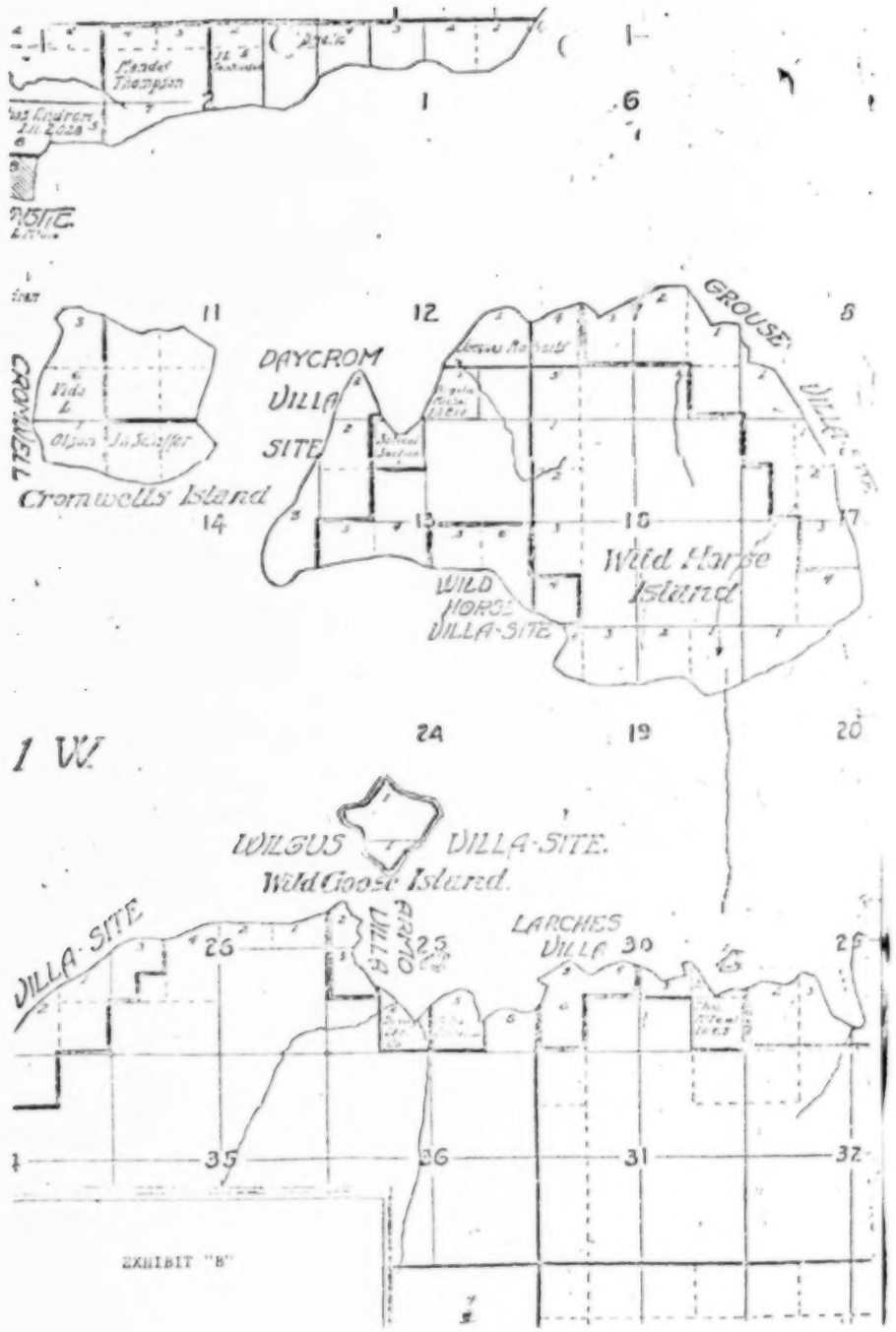
Respectfully submitted,

Signed: Richard A. Baenen/RUR
1735 New York Avenue, N.W.
Sixth Floor
Washington, D.C. 20006

Signed: Victor F. Valgenti/RUR
212 Missoula First Federal Building
Missoula, Montana 59801
Attorneys for Plaintiffs

APPENDIX C


DAYTON
Dayton Creek
TOWNSITE
CROMWELL VILLA SITE
Cromu
Vida
Olson
5
4
3
8
9
10
7
15
T. 24 N.-R. 21 W.
29
28
27
32
33
34
BIG ARM VILLA-SI
BIG ARM TOWNSITE


Flandel Thompson
TOWNSITE
11
12
CROMWELL
Vida
Olson
Cromwells Island
14
DAYCROM VILLA SITE
GROUSE
VILLA-SITE
13
18
17
Wild Horse Island
WILD HORSE VILLA-SITE
1 W.
24
19
20
WILGUS VILLA-SITE.
Wild Goose Island.
VILLA-SITE
LARCHES VILLA
30
25
26
35
36
31
32
EXHIBIT "B"

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

No. 2343

Filed: November 1, 1974
John E. Pederson, Clerk
By: Dawna Nierstheimer, Deputy Clerk

THE CONFEDERATED SALISH and KOOTENAI TRIBES, *et al*,

Plaintiffs,

v.

JAMES M. NAMEN, *et al*, and CITY OF POLSON, a Montana municipal corporation, Intervenor

Defendants.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED that Defendants and other riparian owners have expended large sums of moneys for the erection of docks and wharfs abutting their lands on the south half of Flathead Lake.

IT IS HEREBY STIPULATED AND AGREED that the above-entitled action is the first instance in which the Plaintiffs have judicially alleged exclusive rights to the bed and banks of Flathead Lake below highwater mark as that alleged right relates to the erection of docks and wharfs.

RICHARD A. BAENEN
By: /s/ Richard A. Baenen by UFV
Attorney for the Plaintiff

CHRISTIAN, McGURDY,
INGRAHAM & WOLD
By: /s/ F. L. Ingraham
Attorneys for the Intervenor

POORE, McKENZIE, ROTH,
ROBISCHON & ROBINSON
By: /s/ Urban L. Roth
Attorneys for the Defendants

ORDER

IT IS ORDERED that the facts above stipulated to are hereby made a part of the record in the above-entitled case.

DATED this 1st day of November, 1974.

Signed: William J. Jameson
District Judge

APPENDIX E

HOUSE OF REPRESENTATIVES
58th CONGRESS, 2nd Session

Report No. 1678

SURVEY, ETC., OF FLATHEAD INDIAN LANDS, MONTANA

March 17, 1904 — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. MARSHALL,
from the Committee on Indian Affairs,
submitted the following
REPORT

[To accompany H.R. 12231.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 12231) for the survey and allotment of lands now embraced within the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment, having had the same under consideration, submit the following report and recommend the passage of the bill with the amendments herein set forth.

In line 6, page 3, after the word "by," insert "the smallest."

In line 7, page 3, after the word "subdivisions," insert "of forty acres each."

In line 20, page 3, strike out the word "six" and insert the word "eight."

After the word "employed," in line 20, insert "with such assistance as may be necessary, at a salary not to exceed six dollars per day while so actually employed."

In line 23, page 3, after the word "agent," insert "and inspector."

On page 4, line 17, after the word "occupied," insert "not exceeding two sections in any one township."

On page 6, line 24, after the word "cash," insert "or at public auction, as the Secretary of the Interior may determine."

On page 7, line 13, strike out the word "only."

On page 8, line 6, strike out the words "at public auction."

On page 8, line 16, strike out the words "excepting the" and in lieu thereof insert the word "and."

In line 24 strike out the word "give" and insert the word "aid;" and also strike out the word "a."

In line 25 strike out the word "start;" also the words "the pursuit of;" also the word "or," and insert in lieu thereof "and."

On page 9, line 3, strike out the words "time that this act shall take effect" and insert in lieu thereof the words "date of the proclamation provided for in section nine hereof."

In line 14, after the word "necessary," insert "the same to be reimbursable out of the funds arising from the sale of said lands."

By the treaty with the Flathead Indians, made by

Governor Stevens when this reservation was set aside, it was expressly provided:

> ART. 6. The President may from time to time, at his discretion, cause the whole, or such portion of such reservation as he may think proper to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes as are willing to avail themselves of the privilege and will locate on the same as a permanent home on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

The article in the Omaha treaty referred to expressly provides for the sale of all of the surplus lands, paying the proceeds to the Indians.

There are included in this reservation about 1,450,000 acres of land. It is estimated that 100,000 acres will cover the allotments for all Indians on the reservation, leaving 1,350,000 acres for settlement. Some of the most fertile lands in the State of Montana are embraced within this reservation and are now lying idle and unoccupied.

By the terms of the bill all of these lands are to be appraised by a commission of five persons, two of whom shall be members of this tribe, two of whom shall be citizens of the State of Montana, and one a special agent of the Indian Bureau.

All of the proceeds of sales, except the expense of administering this trust, go to the Indians themselves. We believe no fairer plan can be devised to protect every right of the Indians. The United States, under the terms of this bill, acts as trustee only, and assumes no liability. No appropriation is called for,

except for the payment of sections 16 and 36 at $1.25 per acre, the same to be ceded to the State of Montana for school purposes, in accordance with the enabling act of Montana, which will require not to exceed $100,000.

The Department of the Interior recommends the passage of the bill.

Appended hereto is a letter from the honorable Secretary of the Interior relative to H.R. 8324, which is substantially the same as the present bill, it having been amended in accordance with the recommendations of the Department.

Department of the Interior
Washington, January 13, 1904

Sir: I am in receipt of your letter of the 13th instant, inclosing H. R. 8324, being a bill "for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation in the State of Montana, and the sale and disposal of all surplus lands after allotment," and asking for a report on the same.

In reply I would state that it has been the desire of the Department for some time to take steps to allot the Indians of the Flathead Reservation upon tracts of land in severalty, to make provisions for the irrigation of their allotments, where needed, and to place all the Indians on the reservation in a position to improve their condition and support themselves, and with certain amendments which are indicated and set out below, I believe that these objects can be accomplished by the proposed bill, if enacted into law, viz:

Section 2.—In line 4 of page 2 the words "now holding tribal relations" should be stricken out and the words "having tribal rights" substituted therefor. The language employed in the bill as it now stands is thought to be somewhat ambiguous, and if amended as indicated the rights of any persons as Indians on said reservation if questioned may be determined by the Interior Department in the usual manner.

In line 8 of page 2, after the word "Reservation," insert the words "including the Lower Pend d'Oreille or Calispel Indians now on the reservation." This amendment is deemed to be very necessary in order to fix the status of this band of Indians upon the Flathead Reservation, which is now very doubtful and open to question. In the spring of 1887 the Northwest Commission concluded agreements with the Indians of the Flathead Reservation and the Indians known as the Lower Pend d'Oreille or Calispels residing along the Calispel River in eastern Washington, by the terms of which the latter Indians were to remove to the Flathead Reservation. In anticipation of the ratification of this agreement about one-half of said Calispels under Chief Michael (Michel), removed to the reservation. The other half never removed and are still in the vicinity of their old home in Washington. These two agreements were duly submitted to Congress, but for some reason (unknown to the office) they were never ratified. The necessity for fixing the status of the Calispels now on said Reservation will therefor be apparent.

Section 3.—The Department believes that the work of classifying and appraising the lands of the said reservation can be equally as well accomplished by a

commission of three persons as by one consisting of five. It is therefore recommended that in line 12 of page 2, the word "five" be stricken out, and the word "three" substituted therefor, and that lines 16 to 22 be stricken out and the following substituted in lieu thereof: "One of said commissioners so named by the President shall be an Indian having tribal rights on the Flathead Reservation, such commissioner to be designated by the chiefs and headmen of said confederated tribes of Indians; one of said commissioners shall be a resident citizen of the State of Montana; and the third commissioner shall be a United States special Indian agent or Indian inspector of the Interior Department."

Section 4.—In line 3 of page 3, it is recommended that the word "seven" be stricken out and the word "five" substituted therefor, so as to provide for a salary for the clerk to said commission at $5 per day instead of $7. It is believed that $5 per day will be ample to secure the services of a competent clerk to prform the duties required.

Section 5.—In line 5 of page 3, after the word "appraise," it is suggested that the words "by legal subdivisions" should be inserted, and it is so recommended.

Section 6.—The first clause of this section fixes a maximum limit at which said commission may appraise the several classes of land. The department is emphatically of the opinion that no such limit should be fixed, but that the appraisals should be placed at their real evaluation as to each of the different classes of lands. It is therefore recommended that lines 13,

14, 15, 16, and 17, and all excepting the word "said," in line 18, be entirely eliminated and stricken out.

It is also believed that the timber lands should have the timber thereon estimated by legal subdivisions instead of 160-acre tracts. It is therefore recommended that in line 21, page 6, the words "legal subdivisions be substituted for the words "subdivisions of one hundred and sixty acres thereof."

Section 7.—In line 5 of page 4 the word "each" should be added after the words "per day" so as to provide for a per diem of $10 for each of the two commissioners, excepting the special agent or inspector. Also in line 7 on page 4 the word "complete" should be "completed."

Section 8.—In line 11 of page 4 the words "such classification and appraisement" should be stricken out and the words "the same" inserted. Also in line 12 of page 4 the word "same" should be stricken out and the word "land" inserted therefor.

In line 22 of page 4 the words "herein ceded" should be stricken out and the words "under consideration" substituted therefor. The Flathead Indians have not agreed to any cession of the lands comprising their reservation and no such cession is contemplated.

The provision in section 8 as to payment by the United States for the State school lands is not perfectly clear and makes no provision as to the price per acre to be paid. It is recommended that in lines 22 and 24 of page 4, and line 1 of page 5, the words "which shall be paid for by the United States as herein provided in a quantity equal to the loss, and" be eliminated and stricken out, and that the following

proviso be added at the end of the section, line 2, page 5, as follows: "Provided, That the United States shall pay to said Indians for the lands in said sections 16 and 36, or the lands selected in lieu thereof, the price per acre at which the same are appraisd by the aforesaid commission."

Section 9.—The provision regarding the proclamation of the President opening the surplus lands appears to be somewhat ambiguous as it now stands. It is suggested that after the word "prescribe," in line 5 of page 5, the words "the time when and" be inserted, and that in lines 9, 10, and 11 the phrase "until after the expiration of sixty days from the time when the same are open to settlement and entry" be stricken out.

The Department is of the opinion that the provision in reference to the payments to be made by settlers on said lands should be changed so as to require a larger cash payment at the time of entry. It is therefore recommended that the words "the appraised value thereof in five annual payments annually in advance," lines 21 and 22, page 5, should be stricken out, and the following words substituted therefor: "One-third of the appraised value in cash at the time of entry, and the remainder in five equal annual installments to be paid one, two, three, four and five years, respectively, from and after the date of entry." The words "in advance," in line 24, same page, should be stricken out.

The provision in lines 8, 9, 10, 11, page 6, authorizing the Secretary of the Interior to excuse a settler for failure to make the required payments to defer the same, should be entirely eliminated. From past ex-

perience I am convinced that if the Indians are to receive the full valuation for their lands and to receive it promptly, that no permission should be granted to any settler to defer the time of making payments.

Section 10.—At the end of this section, line 19, page 6, the following provision should be added: "Provided, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian." To permit mineral locations to be made upon the lands allotted to Indians will only invite future trouble for the allottee, and in their behalf and for their protection no such location should be permitted under any circumstances.

Section 11.—This section should be amended by inserting, after the words "Secretary of the Interior," in line 22, page 6, the words "under sealed bids." Full prices for such timber lands and fair competition can best be secured by disposing of the same under sealed bids.

Section 12.—It is recommended that the words "six hundred and forty" should be substituted for the words "three hundred and twenty" in line 25, page 6, and that after the word "Jesus" in line 6, page 7, the words "such lands to be reserved for the uses indicated only so long as the same are maintained and occupied by said society for the purposes indicated" be added.

It is recommended further that the following clause be inserted after the addition last mentioned. "The President is also authorized to reserve lands upon the same conditions and for similar purposes, for any other missionary or religious societies that may make

application therefor within one year after the passage of this act, in such quantity as he may deem proper."

Section 13.—In line 19, page 7, the words "one dollar and twenty-five cents per acre" should be stricken out, and the words "their appraised value" substituted therefor, and it is so recommended.

There can be no justification for selling lands at $1.25 per acre that are appraised at $3 or $4 per acre, or perhaps more. There is no doubt but that lands which remain unentered by homesteaders with the requirement of settlement and residence for five years annexed, might readily sell for their appraised price without such requirements and in tracts of 320 acres. If it should happen that any of the tracts are appraised too high to secure purchasers or entrymen, then provision should be made for a reappraisement. Under no conditions should the price of sale be reduced below the appraised value.

Another point should be noted in this connection, and that is the probability that prospective settlers would be deterred from entering the lands at the appraised value, should they know, as proposed in the bill, that at some future time the lands might be procured at perhaps one-third or one-half the appraised price. A practical illustration of such a condition was afforded in connection with the opening of the Great Sioux Reservation in Dakota, by the act of March 2, 1889 (25 Stat. L., p. 888).

Section 14.—Strike out the whole of section 14 and insert as follows:

"Sec. 14. That the proceeds received from the sale

of said lands in conformity with this act shall be paid into the Treasury of the United States, and, after deducting the expenses of the commission, of classification and sale of lands, and such other incidental expenses as shall have been necessarily incurred, excepting the expenses of the survey of the lands, shall be expended or paid annually as they accrue, as follows: One-half shall be expended by the Secretary of the Interior, as he may deem advisable, for the benefit of said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Calispels thereon at the time that this act shall take effect, in the construction of irrigation ditches, the purchase of stock cattle, farming implements, or other necessary articles to give the Indians a start in the pursuit of farming or stock raising, and the remaining half to be paid to the said Indians and such persons having tribal rights on the reservation, including the Lower Pend d'Oreille or Calispels thereon at the time that this act shall take effect, or expended on their account, as they may elect."

Section 15.—It is recommended that the following be substituted for section 15 of said bill:

"That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sum as may be necessary to pay for the lands granted to the State of Montana, and for lands reserved for agency, school, and mission purposes, as provided in sections 8 and 12 of this act, at their appraised valuation; also the sum of seventy-five thousand dollars, or so much thereof, as may be necessary, to enable the Secretary of the Interior to survey the lands of said reservation, as provided in section 1 of this act."

In connection with the aforesaid proposed item for State school lands, the Department has to say that it would be impossible, in advance of the survey and appraisement of said lands, to estimate, even approximately, the value of such school lands. The reservation contains, it is now estimated, about 1,433,000 acres. One eighteenth of this, which is to be donated to the State, would be about 80,000 acres. As it is believed that the average value of those lands will be considerably more than $1 per acre, it will be seen that the proposed appropriation of $90,000, as provided in said bill, would in any event be insufficient.

Section 16.—In line 15, page 9, after the word "township," insert "and the reserved tracts mentioned in section 12."

Section 17.—This section provides for the consent of the Indians to the provisions of the bill before the same shall become effective. The bill if amended as above recommended, will fully safeguard and protect the rights and interests of the Flathead Indians, and there is no occasion for presenting the matter to the Indians for the purpose of procuring their consent thereto. It is accordingly recommended that said section 17 be entirely stricken out.

Very Respectfully,

E. A. Hitchcock, Secretary.

The Chairman of the Committee on Indian Affairs,
House of Representatives.

APPENDIX F

SENATE

58th CONGRESS, 2d Session

Report No. 1930

FLATHEAD INDIAN RESERVATION LANDS.

April 7, 1904 — Ordered to be printed.

MR. STEWART,
from the Committee on Indian Affairs,
submitted the following
REPORT.
[To accompany H. R. 12231.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 12231) for the survey and allotment of lands embraced within the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment, having had the same under consideration, submit the following report and recommend the passage of the bill without amendment:

By the treaty with the Flathead Indians, made by Governor Stevens when this reservation was set aside, it was expressly provided that the President should cause the lands to be surveyed, the necessary lands alloted to the Indians, and all the surplus lands sold for their benefit. The present bill merely provides the necessary means for carrying the agreement with the Indians into effect.

We believe that the provisions of this bill in creating a commission to be named by the President for

the classifying and appraising of these lands, consisting of two Indians now holding tribal relations with the said Indians, two citizens of the State in which the lands are situated, and one special agent of the Indian Bureau, is a most just and equitable provision and one that will meet with the approbation of all friends of the Indians in fully protecting their interests.

These Indians now inhabiting said Flathead Reservation are far advanced in civilization and are anxious for the early carrying into effect of the wise and equitable provisions of this act.

It is estimated that less than 100,000 acres of these lands will be more than sufficient to allot all Indians now on the reservation and that about 1,350,000 acres of land will be thrown open for settlement lands.

The bill provides that the commission shall segregate all timber lands, which shall be sold from time to time by the Secretary of the Interior under such regulations as he may prescribe. The agricultural lands are to be opened for homestead settlement only, the settlers paying the appraised price of the lands settled upon.

At the expiration of five years such waste and grazing lands as may then remain unsettled may be sold by the Secretary of the Interior under such regulations as he may prescribe.

The United States Government only acts herein as trustee for the Indians.

We believe this bill to be most meritorious, just, and equitable and recommend its passage without amendment.

The honorable Secretary of the Interior and the honorable Commissioner of Indian Affairs both recommend the passage of the bill.

Attached hereto is the report of the House Committee on Indian Affairs, with the report from the honorable Secretary of the Interior on the original House bill, which was amended in accordance with his recommendations.

(See attached Appendix E for report of the House Committee on Indian Affairs, with attached report from the Honorable Secretary of the Interior, E. A. Hitchcock.)

APPENDIX G

REGULATIONS FOR THE SALE OF THE VILLA-SITE LOTS AROUND FLATHEAD LAKE IN THE FORMER FLATHEAD INDIAN RESERVATION, MONT.

Department of the Interior
Washington, March 20, 1915

The Commissioner of the General Land Office.

Sir: Under the provisions of the act of April 12, 1910 (36 Stat., 296), you are directed to cause the lots surveyed as villa sites around Flathead Lake, in the former Flathead Indian Reservation, Mont., to be offered for sale at Polson, Mont., at public outcry, under the supervision of the superintendent of opening and sale of Indian lands, at not less than $10 per acre, beginning on July 26, 1915, and continuing thereafter from day to day as long as may be necessary, Sundays and holidays excepted, in the manner and under the terms hereinafter prescribed.

Manner—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms—Payments will be required as follows: No lot will be disposed of for less than $10 per acre, and

at least 25 per cent of the bid price of each lot sold must be paid on the date of the sale and the remainder, if the price bid is $50 or less, within one year from the date of sale; if the price bid be over $50 and less than $100, 75 per cent of the cost may be divided into two equal payments, due, respectively, one and two years from the date of the sale; if the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into three equal payments, due, respctively, one, two, and three years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a non-transferrable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the the purchaser to make entry upon completing the payments; the receiver in such case will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser, and the final entry and patent will issue to the original purchaser when all payments are made. All lots affected by the easement provided for in the act of April 24, 1912 (37 Stat., 527), as shown upon the approved plats of said lots, will be sold subject to said easement.

Forfeiture—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited, and the lot, after forfeiture is declared,

will be subject to disposition as provided in said act. Lots remaining unsold at the close of sale, or thereafter declared forfeited for nonpayment of any part of the purchase price under the terms of the sale, will be subject to future disposition at public sale at such time and place as may thereafter be provided. All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 2373 of the Revised Statutes of the United States, which reads as follows:

> "Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree, with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation or unfair management hinders or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars or imprisoned not more than two years, or both."

The superintendent of the opening and sale of Indian lands will be, and he is hereby, authorized in his discretion to fix for any lot a greater minimum price per acre than $10, and he may reject any and all bids for any lot, and at any time suspend, adjourn, or

postpone the sale of any lot or lots to such time and place as he may deem proper.

Very respectfully,

A. A. Jones,
First Assistant Secretary.

FLATHEAD LAKE, MONTANA,

Is situated near to and slightly southwest of the Glacier National Park, the region of eternal ice, which may be reached by automobile from the lake in about three hours. The lake is in a valley 15 miles wide and 30 miles long, between ranges of the Rocky Mountains of scenic beauty, whose slopes are covered with fir, larch, and pine trees. The lake has an area of approximately 360 square miles. The Flathead National Forest lies north, west, and east of the valley. The lake and streams abound in fish, and hunting is excellent. The lake is utilized for bathing, sailing, boating, and yachting, and several steamboats ply between the various towns upon its borders. The shores are well adapted for boat landings and the erection of wharves.

The lands abutting the north half of the lake were disposed of many years ago, and numerous homes and fruit orchards have been established thereon. The south half of the lake is within the former Flathead Indian Reservation. The climate is delightful, the themometer ranging from about zero to 75° or 80° above. Apples, pears, cherries, peaches, and small fruits of the finest quality are raised upon lands bordering upon the lake, many without irrigation.

Twenty-one groups of villa sites fronting on said lake have been surveyed into 905 lots or villa sites

for disposition, and a sale of such portion thereof as the demand may warrant will take place in accordance with the regulations hereto attached. The lots contain not less than two or more than five acres.

These villa sites are not only well adapted for summer villas for persons of wealth but for permanent homes for persons of moderate means and for fruit raising. Good roads, adapted to automobile use, skirt the shores of the lake.

The location of the groups of villa sites is shown upon the above plat, and the name of each group and the number of villa sites are are follows:

Name	*Lots*	*Name*	*Lots*
Alson	14	Larches	18
Armo	11	Matterhorn	54
Baptiste	20	Narrows	5
Big Arm	64	Orchard	44
Blue Grade	40	Pollard	24
Cromwell	31	Safety Bay	181
Daycrom	43	Station	10
Featou	79	White Swan	61
Finley Point	32	Wild Horse	29
Grouse	93	Wilgus	17
Island	3		

The sale will begin at Polson on July 26, 1915, and continue at such other places as may be selected by the superintendent of sale. Polson may be reached from Kalispell either from east or west by lake shore. Automobile stages run daily from Polson on the lake to Ravalli, on the Northern Pacific Railway, and from Elmo, on the lake, to Plains, on said railway, via Camas Hot Springs. Trains from Kalispell, on the

Great Northern Railway, connect at Somers for the morning trips of the steamers over the lake to Polson, and from Somers to Big Arm by way of Dayton, Elmo, and many other wharf landings on the western shore. Stop-over privileges can be obtained at Missoula, on the Chicago, Milwaukee & St. Paul Railway, and the lake be reached by automobile stage. The Canadian Pacific Railway will also allow stop-over privileges at Elko, Fernie, or Michel, British Columbia, on tourist tickets, from which points connections can be made with the Great Northern Railway to Somers, on the lake.

Plats of the 21 villa sites will be on file in the following United States land offices: Billings, Bozeman, Glasgow, Great Falls, Havre, Helena, Kalispell, Lewistown, Miles City, and Missoula, Mont.; Denver, Colo.; Cheyenne, Wyo.; Bismarck, N. Dak.; Pierre, S. Dak.; Sante Fe, N. Mex.; Phoenix, Ariz.; Salt Lake City, Utah; Carson City, Nev.; Spokane and Seattle, Wash.; Portland, Oreg.; and Los Angeles and San Francisco, Cal. A set of the plats will also be on file with the United States Reclamation Service, room 802 Post Office Building, Chicago, Ill. These plats will be subject to inspection without charge.

Through the courtesy of the Post Office Department, complete sets of the above plats of villa sites may be examined in the post offices at New York, Philadelphia, Boston, Pittsburgh, Atlanta, and New Orleans.

APPENDIX H

SENATE
61st CONGRESS, 2d Session

REPORT NO. 117

SURVEY, ALLOTMENT, ETC., OF LANDS IN FLATHEAD INDIAN RESERVATION, MONT.

January 26, 1910 — Ordered to be printed.

MR. DIXON,
from the Committee on Indian Affairs,
submitted the following
REPORT.
[To accompany S. 3983]

The Committee on Indian Affairs, to which was referred Senate bill 3983, entitled "A bill to amend the act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled 'An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment,' and all amendments thereto," beg leave to report the same back to the Senate with the recommendation that the bill do pass with amendments.

The Flathead Indian Reservation has been surveyed and allotments made to all of the Indians holding tribal relations with the Flathead Indians. The bill in question proposes to survey and sub-divide into small lots for summer-residence sites the entire unallotted lands fronting on Flathead Lake, the pro-

ceeds from the sale of these lots to be used in furthering the reclamation of the allotted Indians' lands which is now being carried on. The lands fronting on this lake are of little agricultural value, and it is believed that a large amount of money can be realized from the sale of the lake frontage; much more than can be realized under the present status of these lands, opening them to settlement. The bill also provides that, where Indian allotments are irrigated, that the Secretary of the Interior may, upon the application of the Indian allottee, sell a portion of his allotment, retaining in all cases a sufficient amount of land for actual cultivation by the allottee. The bill also provides for an exchange of allotments where the allotments already made fall under the reservoir sites that are needed in the construction of the irrigation projects. Your committee is of the unanimous belief that the proposed legislation is most meritorious and for the benefit of the Flathead Indians.

The bill in question was referred to the Secretary of the Interior for a report, which is attached hereto, marked Exhibit "A," and made a part hereof.

Amend the bill by striking out all of the original bill, except the enacting clause, and inserting in lieu thereof the following:

> That the act of April twenty-third, nineteen hundred and four (Thirty-third Statutes at Large, page three hundred and two), entitled "An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana," and all amendments thereto, be amended by adding thereto the following sections:
>
> "Sec. 23. That the Secretary of the Interior be,

and he is hereby, authorized to immediately cause to be surveyed and subdivided into lots, not less than two acres and not more than five acres in area, all of the unallotted land fronting on Flathead Lake, in the State of Montana, that are embraced within the limits of the Flathead Indian Reservation, whether classified as grazing, agricultural, or timberlands.

"That when said lands are so surveyed and subdivided into lots as aforesaid, the Secretary of the Interior shall sell the same to the highest bidder, either at public sale or under sealed bids, as in his judgment he shall deem best for the interest of the confederated tribes of the Flathead, Kootenai, and Upper Pend d'Oreille Indians, the proceeds from the sale of said lands, after deducting the expenses of the survey and sale of the lands, shall be paid into the Treasury of the United States and expended as heretofore provided in section fourteen, as amended by the act of May twenty-ninth, nineteen hundred and eight.

"Sec. 24. That where allotments of lands have been made in severalty to said Indians from the lands embraced within the area of said Flathead Indian Reservation, which are or may be irrigable lands, the Secretary of the Interior may, upon application of the Indian allottee, sell and dispose of not to exceed sixty acres of such individual allotment of land, under such terms and conditions of sale as the Secretary of the Interior may prescribe, one-half of the proceeds of the sale of said individual allotment to be paid to the Indian allottee and the remaining half of the proceeds of sale to be held in trust for the said Indian allottee, upon which he shall be paid annually not less than three per centum interest, the remaining principal sum to be paid to said allottee or his heirs when the full period of his trust patent for the remaining lands covered by his allotment shall

have expired, or sooner, should the Secretary of the Interior, in his judgment, deem it best for said Indian allottee.

"And in the event of the failure, neglect, or refusal of any such allottee to relinquish any allotment made to him on any land reserved or necessary for reservoir sites, as aforesaid, the Secretary of the Interior is authorized to bring action under the provision of the laws of the State of Montana to condemn and acquire title to any and all lands necessary or useful for said reservoir sites that have heretofore been allotted on said Flathead Indian Reservation lands."

EXHIBIT A

DEPARTMENT OF THE INTERIOR

Washington, January 17, 1910.

Sir: I have the honor to acknowledge the receipt, by your reference, of a copy of Senate bill No. 3983, Sixty-first Congress, second session, amending the act of April 23, 1904 (33 Stat. L., 302), entitled "An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," and all amendments thereto, by authorizing the sale and disposal of the unallotted lands fronting on Flathead Lake in areas of not less than 2 nor more than 5 acres as summer residence sites to the highest cash bidder, and the sale and disposal of not to exceed 60 acres of any allotment on irrigable lands on application by the Indian allottee.

The department is of the opinion that a larger sum will be procured from the sale of the unallotted lands bordering Flathead Lake in areas of from 2 to 5 acres for summer-residence sites than

from their sale as provided in section 8 of the act of April 23, 1904, supra. It is believed, however, that the proceeds derived from the sale of these lands should be subject to the same disposition as is provided for the proceeds derived from other surplus lands by section 14 of the act of April 23, 1901, supra, as amended by the act of May 29, 1908 (35 Stat. L., 444-450).

The two sections numbered 1 and 2 of the bill do not relate to sections 1 and 2 of the act of April 23, 1904, supra, which it is proposed to amend. It is suggested that possible confusion will be obviated by giving the two sections of the bill the next consecutive numbers of the original bill as amended by the act of March 3, 1909 (35 Stat. L., 795-796).

It is respectfully recommended, therefore, that the following changes be made in the bill:

In line 9, page 1, strike out the words "as follows" and insert in lieu thereof the words "by adding thereto the following sections."

Strike out the figure "1" in line 1, section 1, page 2, and insert in lieu thereof the figures "23."

Strike out the figure "2" in line 18, section 2, page 2, and insert in lieu thereof the figures "24."

In section 2, page 2, strike out all that part after the word "lands" in line 14, and insert in lieu thereof the following: ", after deducting the expenses of the survey and sale of the lands, shall be paid into the Treasury of the United States and expended as heretofore provided in section fourteen, as amended by the act of May twenty-ninth, nineteen hundred and eight."

The act of March 3, 1909, supra, authorized the Secretary of the Interior to reserve from location, entry, sale, or other appropriation all lands within the Flathead Reservation chiefly valuable for power or reservoir sites. There are about 144 Indian allotments within the areas withdrawn for power and reservoir sites. The department has been unable to procure the relinquishment of all of these allotments. No authority has been conferred on the department to compel the relinquishment of these allotments and it is not probable that the voluntary relinquishment of all the allottees can be procured before April 1, 1910, the date set by the President's proclamation for making entry of the surplus lands on this reservation. It is believed that the department should be authorized to reserve a sufficient quantity of the surplus lands to provide lieu allotments for those Indians who may hereafter relinquish their allotments within any of the power or reservoir sites referred to, by adding to Senate bill No. 3983, Sixty-first Congress, second session, the following:

"Section 25. That the Secretary of the Interior is hereby authorized to set aside and reserve so much of the surplus unallotted and otherwise unreserved lands of the Flathead Indian Reservation as may be necessary to provide an allotment to each Indian having an allotment on any of the lands set aside and reserved for power or reservoir sites, as authorized by section twenty-two of the act of March third, nineteen hundred and nine (Thirty-fifth Statutes at Large, page seven

hundred and ninety-six), who may relinquish his allotment within such power or reservoir site; and the"

The department will be glad to see the amendments suggested herein become a part of the law.

Very Respectfully,

R. A. BALLINGER, *Secretary.*

Hon. Moses E. Clapp,

Chairman Committee on Indian Affairs,

United States Senate.